

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,536
)
Appeal of)

INTRODUCTION

The petitioners appeal a decision of the Department of Social Welfare terminating their ANFC-UP grant based on their alleged failure to continue to meet the criteria for unemployed parents or any other ANFC deprivation factor.

FINDINGS OF FACT

1. The petitioners, a married couple with two preschool aged children, were found eligible for ANFC in August of 1990 based on the husband's meeting all the criteria for an "unemployed parent". The husband is a twenty-six year old graduate of a technical high school.

2. The petitioner was referred to the Reach Up program where an employability plan was developed for him. That plan involved assistance in seeking employment either in his own field, carpentry, or a related field which paid at least \$6.00 per hour or more, the wage he had been earning before he was laid off due to lack of work in the construction trades.

3. The husband fulfilled the requirements of his employability plan but after over a year and a half was unable to find employment in his field. In the Spring of 1992, the husband discussed training in a different field

with his Reach Up counselor. While the counselor encouraged him to take such action, she warned the husband that becoming a full time student might jeopardize his ANFC status. She also told him that the program he proposed, a two year associate's degree in business technology and marketing, was probably too lengthy to get Reach Up assistance. In her experience, unemployed parents in the Reach Up program rarely get assistance with post-secondary schooling beyond a scattered course or two which does not affect their ability to look for work.

4. Despite these warnings, which he may not have completely understood, the husband enrolled as a full-time student at a vocational college for the Fall 1992 semester.

The husband currently attends classes approximately twenty hours per week and is employed as a work study student at the rate of \$4.75 per hour for five to seven hours each week. He has received various grants and loans from state and federal educational associations. However, he does not have any money with which to support his family. He would like to look for a weekend job and continue to receive ANFC benefits until he finds one.

5. On September 29, 1992, the Department notified the petitioners that they would no longer be eligible for ANFC effective October 16, 1992 because, as a full-time student, the husband no longer met the definition of an unemployed parent. Therefore, no deprivation factor existed for the children. The husband called the Department for further

explanation of his denial and was told that a person over twenty-five years of age cannot be a full-time student under the regulations. The petitioner appeals that decision as being age discriminatory.

ORDER

The Department's decision is affirmed.

REASONS

Under the Department's regulations, families with both parents present can become eligible for ANFC only if one parent is either incapacitated or unemployed as those terms are defined in the regulations. W.A.M. § 2330. Neither the husband nor the wife in this case claims to be incapacitated. Therefore, their eligibility depends on one of them meeting the criteria for unemployed parent. When the petitioners applied for ANFC, it was determined that the husband was the family's principal wage earner, a determination that has not been disputed by the petitioners.

Therefore, it is the petitioner who must meet the criteria for unemployed parent since the first criterion requires that the person so designated be the family's principal wage earner. Among the criteria which an applicant must meet to be considered an "unemployed parent" is the following:

An "unemployed parent" is one whose minor children are in need because a parent is out of work or is working part time, providing the parent meets all of the following criteria:

. . .

6. If a full-time student, as defined by the school,

meets the following criteria:

- a. Is under the age of twenty-five (25); and
- b. Does not have a high school diploma or its equivalent, and
- c. Is not in postsecondary education; and
- d. Is scheduled to attend classroom training at least twenty (20) hours per week and actually attends an average of at least sixteen (16) hours per week each month.

. . .

A recipient must meet the 100-hour and full-time student criteria (#3 and #6 above) on an ongoing basis for the assistance group to remain eligible for ANFC based on unemployment.

W.A.M. § 2333.1

Although the petitioner characterizes his termination from ANFC as being age based, it is more accurate to say that he is being terminated because he is a full-time student. The regulations basically carve out a small exception to the general prohibition against full-time students receiving ANFC-UP for young adults who are trying to get secondary (i.e. high school) diplomas. The petitioner here meets neither the age requirement nor the secondary education requirement. Therefore, even if the age requirement were found to violate the equal protection laws, the petitioner would still be ineligible based on the type of education he is attending full-time and so must argue that the latter classification violates principles of equal protection as well.

In order to prevail on his equal protection claim, the petitioner would be required to show that the Department's eligibility exception for full-time secondary students only

is not rationally related to the purposes of the ANFC program since no fundamental right or suspect class is involved. See Bouvier v. Wilson, 139 Vt. 494 (1981), In re Barcomb, 132 Vt. 225 (1984).

The petitioner has made no such showing in this case. The state Statute authorizing the ANFC program states that:

(a) Aid shall be given for the benefit of a dependent child to the relative with whom the child is living unless otherwise provided. The amount of aid to which an eligible person is entitled shall be determined with due regard to the income, resources and maintenance available to him and, as far as funds are available, shall provide him a reasonable subsistence compatible with decency and health. The commissioner may fix by regulation maximum amounts of aid, and act to insure that the expenditures for the programs shall not exceed appropriations for them. In no case may the department expend state funds in excess of the appropriations for the programs under this chapter.

(b) Aid may include the maintenance of one or both parents, if in need and in the dependant child's home, or a relative with whom a dependent child is living, if the relative is without sufficient means of support.

33 V.S.A. § 1103

That statute also specifies that a dependent child is:

"a needy child who:

. . .

(C) Has been deprived of parental support or care by reasons of:

. . .

(iii) the unemployment of a parent , and is living with a relative. However, this subparagraph (iii) shall be effective only so long as federal grants for aid and services to needy families with children are available to the department for the purposes of this subparagraph.

33 V.S.A. § 1101

The federal regulations at 45 C.F.R. § 250.21(A)(c)(6) permit federal financial participation in the unemployed parent program for state plans which opt to allow a parent "under age twenty-five who has not completed high school or an equivalent course of education to meet the unemployed parent program sixteen hour work requirement by participating in educational activities." It must be concluded from the above that a parent who is over twenty-five and who has a high school diploma cannot avoid the work search requirements of the unemployed parent program by substituting full-time educational activities and be found eligible for ANFC under the state statute, since the federal government will not contribute assistance for such a situation.

It must be concluded, therefore, that the Department's regulation is at least rationally related to the legislative purpose at 33 V.S.A. § 1101 (1)(C)(iii) to assist unemployed parents for whom they can obtain federal financial participation. As the Department's decision to terminate ANFC is based squarely on its regulation, that decision must be upheld. 3 V.S.A. § 3091(d). The petitioner is advised that under the regulations, he may be able to attend his technical college on a part-time basis and still maintain his "unemployed parent" status. He is urged to discuss this with his worker.

FOOTNOTE

¹The petitioners do not argue that the wife meets unemployed parent criteria.

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